

**5588. Supplement to Notice of Judgment No. 4842. Misbranding of "Abbott Bros. Rheumatic Remedy." U. S. \* \* \* v. Abbott Brothers Co., a corporation. Judgment of conviction of lower court affirmed by the Circuit Court of Appeals. (F. & D. No. 6190. I. S. No. 7945-e.)**

At the conclusion of the trial in the above-stated case the defendant corporation prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and the said appeal was granted. On September 1, 1916, the defendant company filed its writ of error in furtherance of said appeal, and on March 8 and 27, 1917, briefs were filed by the respective parties. On May 22, 1917, the judgment of conviction of the lower court was affirmed, as will more fully appear from the following decision of the Circuit Court of Appeals:

KOHLSAAT, ALSCHULER and EVANS, *Circuit Judges*.

Writ of error to review a judgment entered against Abbott Brothers Company, a Corporation, upon conviction for violation of the Pure Food and Drugs Act.

*Per Curiam.* The contention of the plaintiff in error that the information charging it with having violated the Pure Food and Drugs Act, bearing the signature of the District Attorney for the Northern District of Illinois, and attached to which information and made a part of it were four affidavits sworn to before notaries public, is insufficient to support a judgment because of the insufficiency of the acknowledgment, must be rejected. *Weeks v. United States*, 216 Fed. 292; *United States v. Adams Express Co.*, 230 Fed. 531.

No warrant for arrest having been sought, the information signed by the United States District Attorney was sufficient without any verification and without any supporting affidavits. It was unnecessary for the District Attorney, who signed the information in his official character, to assert in the body of that document that he informed the Court upon his oath as a Government official of the facts therein set forth. It will be presumed he acted on his oath as an officer of the Government.

Nor do we think the plaintiff in error is in a position to raise this question for the first time in this court.

Defects such as are here complained of, are in any event waived if not raised by suitable objection before trial. *People v. Murphy*, 56 Mich. 546; *Bryan v. State*, 41 Fla. 643; *State v. Osborne*, 54 Kan. 473; *State v. Brown*, 181 Mo. 192; *Johnson v. State*, 53 Neb. 103; *State v. Pancoast*, 5 No. Dak. 516; *Hammond v. State*, 3 Wash. 171. See also on waiver of informalities *Garland v. State of Washington*, 232 U. S. 642.

Judgment is

AFFIRMED.

C. F. MARVIN, *Acting Secretary of Agriculture*.